1957 **File No** O Smoke Nuisance/51

Legal Department

A BRANCH

Subject:—

Opinions under the Bombay Smoke Nuisance Act 1912.

P.S (E)

File No. O' Smoke Nuisance /51

Gen. 194

688 H

CONTENTS.

Legal Department Bile No: G Smoke Nuisance/51

Cr. No.	R.L./G.No.	Subject	Pages.
		Bombay Smoke Nuisance Act, 1912.	
1.	13163 17-8-1951	Section 7 and preamble -- whether the two chimneys electric high frequency steel melting furnaces erected by the Indian Standard Metal Co. Ltd., would be hit by the provisions of	1/4.
2.	26587 / 30408 20-11-51 / 13-12-51	Sections 9A(1) and 9A(2) -- As the "further" punishment in section 9A(2) presupposes the offence of erection of chimney by the same person whether it is necessary to amend section 9A(1).	5-6.

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14.6.56.
S.C.

16/6

K.S.R.
16/6

Legal Department.

Smoke Nuisance Act 1912 (Bom. VII of 1912) Section 7 and preamble.

The view taken by the Secretary, Labour and Housing Department is correct.

"The preamble of a Statute has been said to be a good means of finding out its meaning, and, as it were, a key to the understanding of it; and as it usually states or professes to state the general objects and intention of the Legislature in passing the enactment, it may legitimately be consulted to solve any ambiguity or to fix the meaning of words which may have more than one or to keep the effect of the Act within its real scope, whenever the enacting pary is in any of these respects open to doubt. Thus section 3, 26 Geo III. c 107 empowered empowered every person who had served in the militia and was married to set up on trade in a corporate town as freely as soldiers might under an earlier enactment and declared that "no such militia-men" should be removable from the town until he became chargeable. It was open to doubt whether this expression included all married militia-men or only married militiamen who had set up in trade in towns, and the preamble of an earlier Act fixed the latter as the true construction it being stated that the mischief to be remedied was the state of the law which prevented soldiers from setting up in trade in corporate towns." (See Maxwell p. 40 8th Edition). Applying the same principle to the present case it is apparent from the preamble to the Bombay Smoke-Nuisance Act, 1912 (Bom. VII of 1912), that the mischief sought to be remedied by the Act was the abatement of nuisance arising from the smoke of furnaces in the town and Island of Bombay and provision for extension thereof to other areas in the Bombay Presidency. No doubt, "furnace" as defined in section 3(1) of the Act means any furnace or fireplace used for working engines by steam or for any other purpose whatsoever. This definition does not restrict furnaces to those which

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were operated otherwise than by electricity. However, considering the preamble to the Act and the mischief sought to be remedied it appears that furnaces operated by electricity could not fall within the definition of section 3(1). If so, the two electric high frequency steel melting furnaces erected by the Indian Standard Metal Company, Limited, Chinchpokli, cross lane, Bombay 27, would not be hit by the Bombay Smoke Nuisance Act, 1912.

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Additional Secretary to Government.

U.R. to L.& M.D., No. 13162; dated the 17th August, 51.

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In para 5 of his letter No. S. N.- 10707, dated 29-11-54, the Commissioner of Labour observes as follows :-

"There appears to be serious lacuna in section 9A. A provision should be made in section 9A(1) making it an offence to use chimney, furnaces, etc., of which the plans have not been approved by the Commissioner. The section as it reads might be interpreted as making the use of unauthorised chimney or furnace an offence only if such use were made by the very owner who had erected, altered, etc., the chimney or furnace. With such an interpretation, the owner who has purchased a factory of which the chimney or furnace were erected by the previous owner might escape prosecution even though such chimney or furnace had not their plans sanctioned by the Commissioner. If Government approve, therefore, section 9A(1) may be suitably amended etc."

The Secretary, L. & E. Department agrees with the above view and considers that "the further punishment in section 9A(2) presupposes the offence of erection of chimney by the same person. Perhaps section 9A(1) needs amendment." R.L.A. is requested to advise.

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Section 9A(2) of the Bombay Smoke Nuisances Act, 1912, provides for two kinds of offences. :-

(1) The erection alteration etc. of a furnace, flue or chimney without the approval of the Commission.

(2) The use of such chimney without the permission of the Commission.

So far as the second offence is concerned it is not necessary that the use must be by a person who erects the furnace, flue or chimney. The provision is not worded in clear terms and it will be advisable to amend it.

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Remembrancer of Legal Affairs.

U.R. to L.& M.D., No. 20465; dated the 24th December, 1951.

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